

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ASSOCIATION FOR ACCESSIBLE
MEDICINES,

Plaintiff,

v.

KWAME RAOUL,
in his official capacity as Attorney
General of the State of Illinois,

Defendant.

Case No. 1:24-cv-00544

**PLAINTIFF’S UNOPPOSED MOTION TO SEAL AND MAINTAIN
CONFIDENTIALITY OF DOCUMENT IN SUPPORT OF
RENEWED MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Local Rule 26.2, Plaintiff, the Association for Accessible Medicines (“AAM”), respectfully requests that the Court enter an order permanently sealing the unredacted copy of the Declaration of Rodney Emerson ([ECF No. 53](#)), filed in support of AAM’s Renewed Motion for a Preliminary Injunction ([ECF No. 51](#)). AAM further requests that the Court enter an order prohibiting Defendant from disclosing the sealed portions of the Emerson Declaration to any person except those persons within the Office of the Attorney General of Illinois or the Illinois Department of Healthcare and Family Services (or, with reasonable advance notice to AAM of the disclosure, retained by that Office) to whom disclosure is necessary for Defendant to litigate this action. The Court has granted AAM’s prior motions to seal the same confidential information it is now requesting be sealed in the Emerson Declaration. See [ECF Nos. 24, 37](#). Defendant consents to the relief requested in this motion.

In support of this motion, AAM states as follows:

1. On July 9, 2024, AAM filed its Amended Complaint against Defendant, the Attorney General of Illinois, alleging that HB 3957 is unconstitutional. [ECF Nos. 34, 35](#).

2. On January 3, 2025, AAM filed its Renewed Motion for a Preliminary Injunction, seeking to enjoin Defendant from enforcing HB 3957 against AAM's members. [ECF No. 51](#).

3. In support of its Renewed Motion for a Preliminary Injunction, AAM has submitted the Declaration of Rodney Emerson, the Vice President of Pricing and Contracts at Sandoz, Inc. ("Sandoz"). The Emerson Declaration describes non-party Sandoz's pricing plans for one of its generic products. In accordance with Local Rule 26.2(c), AAM filed: (1) an unredacted copy of the Emerson Declaration provisionally under seal ([ECF No. 53](#)); and (2) a separate copy of the Emerson Declaration on the public docket ([ECF No. 54](#)), which redacts the portions of the declaration that AAM now requests be permanently sealed.

4. AAM respectfully requests that the Court permanently seal the unredacted copy of the Emerson Declaration ([ECF No. 53](#)). The limited portions of the Emerson Declaration AAM requests be permanently sealed consist of: (1) internal pricing information for a specific product of non-party Sandoz; and (2) information that would reveal the identity of that product. AAM seeks to have these narrow categories of information permanently sealed to protect the confidentiality of non-party Sandoz's proprietary pricing information and to prevent the harm to its competitive position that would result if its confidential pricing plans were made public.

5. This Court previously granted AAM's motion to seal a materially identical declaration from another Sandoz employee that AAM submitted in support of its previous motion for a preliminary injunction. [ECF Nos. 21, 24](#). The Court also granted AAM's motion to seal portions of its Amended Complaint that consisted of the same confidential information contained

in the previously filed declaration, in addition to sealing portions of the Court's order denying Defendant's motion to dismiss the Amended Complaint. [ECF Nos. 36, 37, 46, 47](#).

6. The requirements for sealing the redacted portions of the Emerson Declaration are satisfied. Although materials submitted in litigation are "presumptively in the public domain," [Solaia Tech. LLC v. Arvinmeritor, Inc.](#), 2004 WL 549449, at *1 (N.D. Ill. Jan. 28, 2004), this Court's Local Rules provide that "[t]he court may for good cause shown enter an order directing that one or more documents be filed under seal," Local Rule 26.2(a); *see also* [Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.](#), 178 F.3d 943, 945 (7th Cir. 1999) (providing that the public's interest in judicial proceedings "does not always trump the property and privacy interests of the litigants" and "can be overridden ... only if there is good cause for sealing a part or the whole of the record").

7. "[T]rade secrets" as well as "other properly demarcated categor[ies] of legitimately confidential information ... are entitled to be kept secret and out of the public record." [Solaia Tech. LLC](#), 2004 WL 549449, at *1 (citations omitted); *see* [SmithKline Beecham Corp. v. Pentech Pharms, Inc.](#), 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) ("[P]ortions of documents that are shown to contain trade secrets, or other information that would cause undue private or public harm if disclosed ... may be kept under seal."). This includes "[h]ighly confidential commercial information[,] such as pricing information," which may be kept confidential if: (1) "the information [is] sufficiently secret to give [the company] a competitive advantage," and (2) "[the company] took affirmative measures to prevent others from acquiring or using the information." [FTC v. OSF Healthcare Sys.](#), 2012 WL 1144620, at *3 (N.D. Ill. Apr. 5, 2012) (citing [Baxter Int'l, Inc. v. Abbott Lab'ys](#), 297 F.3d 544, 547 (7th Cir. 2002)).

8. The Emerson Declaration describes Sandoz's pricing plans for an identified

pharmaceutical product. *See* Emerson Decl. ¶¶ 15-19. Sandoz does not disclose its pricing plans for any of its products before they take effect, and it has implemented safeguards to prevent such pricing information from becoming known to its competitors or any third party. *See id.* ¶ 20. Making Sandoz’s confidential pricing decisions public would harm Sandoz’s competitive position by giving Sandoz’s competitors the opportunity to adjust their own pricing or other business strategies based on that pricing information. *See id.* ¶¶ 21-22; accord [*SmithKline Beecham Corp.*, 261 F. Supp. 2d at 1008](#) (confidentiality justified where disclosure “might give other firms an unearned competitive advantage”). In addition, maintaining the confidentiality of Sandoz’s pricing plans is necessary to ensure compliance with applicable laws, including federal and state antitrust laws. *See* Emerson Decl. ¶ 21; accord [*Benton County Wind Farm LLC v. Duke Energy Ind., Inc.*, 2015 WL 12559884, at *2 \(S.D. Ind. Aug. 26, 2015\)](#) (granting motion to seal bids and bid history, in part to avoid “a reduction of competition in contravention of antitrust laws”).

9. In addition, the Emerson Declaration contains information that Sandoz’s competitors could use to identify the specific product referenced in the declaration. Specifically, the Emerson Declaration describes the conditions for which the Sandoz product is indicated, its reference listed drug, where it is manufactured, details regarding the manufacturing process and facilities, and dosage information. Emerson Decl. ¶¶ 9-14. This information, if made public, would enable Sandoz’s competitors to identify the product and then use that information in formulating their pricing or other business strategies to harm Sandoz’s competitive position. *Id.* ¶ 22.

10. Conversely, the “public does not need to know” the details of Sandoz’s pricing plans, or the identity of the specific product that is the subject of those pricing plans, “in order to evaluate the handling of this litigation by the judiciary.” [*SmithKline Beecham Corp.*, 261 F. Supp.](#)

[2d at 1008](#). The portions of the Emerson Declaration AAM has *not* sought to seal, and which are viewable in the redacted copy of the Emerson Declaration filed on the public docket ([ECF No. 54](#)), identify the company that owns the product (Sandoz), and describe the details of the company's pricing plans for that product and that those pricing plans would trigger liability under HB 3957. That information is more than sufficient to enable the public to understand this case and the Court's "handling of this litigation." [SmithKline Beecham Corp., 261 F. Supp. 2d at 1008](#).

11. Thus, good cause exists to permanently seal the unredacted copy of the Emerson Declaration. *Accord* [OSF Healthcare Sys., 2012 WL 1144620, at *3](#) (granting motion to seal documents containing pricing information); [Hedrick v. Kraft Heinz Co., 2019 WL 4958238, at *13 \(N.D. Ill. Oct. 8, 2019\)](#) (finding good cause to permit sealing of proprietary information); [Williamson v. S.A. Gear Co., 2017 WL 3971043, at *1 \(S.D. Ill. Sept. 8, 2017\)](#) (granting motion to seal documents consisting of "confidential, proprietary business information" in the form of company's "unique internal claims procedures, warranty processes, and sales information"); [Caterpillar Inc. v. Brington Indus. Ltd., 2014 WL 12733648, at *2 \(C.D. Ill. Jan. 31, 2014\)](#) (permitting sealing of "royalty rates" where proponent "derives economic value from keeping the royalty rates confidential").

12. Accordingly, AAM respectfully requests that the Court grant this motion to permanently seal the unredacted copy of the Declaration of Rodney Emerson ([ECF No. 53](#)).

13. Further, AAM respectfully requests that the Court enter an order prohibiting Defendant from disclosing the confidential portions of the Emerson Declaration to any person except those persons within the Office of the Attorney General of Illinois or the Illinois Department of Healthcare and Family Services (or, with reasonable advance notice to Plaintiff of the disclosure, retained by that Office) to whom disclosure is necessary for Defendant to litigate this action. This

relief is necessary to ensure that the portions of the Emerson Declaration that AAM has requested be permanently sealed remain confidential. The Court granted this same relief when approving AAM's previous motions to seal. *See* [ECF Nos. 21](#), [24](#), [36](#), [37](#).

14. AAM has conferred with counsel for Defendant, who have consented to the relief requested in this motion.

Dated: January 3, 2025

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